(3)
CH 604

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

F.A. No. 205 /2003 Single Bench

APPELLANT / PLAINTIFF : Nirmal Toppo s/o Shri Jwakim Toppo, age 37 years, Caste-Uraon, permanent r/o village Bahora, Tehsil Bagicha, District Jashpur, C.G., present Address-Bhilai, Sector-4, District Durg, C.G.

V E R S U S

RESPONDENT / DEFENDANT : Smt. Sunita Toppo w/o Shri Nirmal Toppo & D/o Shri Romanus Bada, age 30 years, Caste-Uraon, permanent r/o village Semardih, Tehsil Bagicha, Distt. Jashpur, present address-Madhuvan Nagar, Borsi, Street no. 6, Sector-B District Durg, C.G.

P. R. No. 2411/03 Presented by Shri A.K. Patel dated 29.10.03

APPEAL UNDER SECTION 96 C.P.C. R/W. SECTION 55 OF THE INDIAN DIVORCE ACT, 1869.

XI-HC-22

(13)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

1

आदेश पत्रक

मामला क्रमांक FA No. 205/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	23/4/2004 Shri Sunil Sinha with Shri A.K. Prasad for the appellant. Shri Manindra Shrivastava with Shri Ashish Shrivastava for the respondent. Heard. 2. The appellant/husband has filed the present first appeal against the judgment dated 04.10.2003 passed by the Second Additional District Judge (FTC), Jashpur in Civil Suit No.10-A/2003. 3. Briefly stated the facts are that the appellant and respondent are Christians by caste. The marriage between the parties had taken place according to Christian law on 19.05.1997. It is said that for some time they lived together. Thereafter, it is alleged that the wife deserted the husband. The appellant/husband filed a petition for divorce under Section 10 of the Divorce Act, 1869 on the ground of desertion by the respondent/wife for a continuous period of more than 3 ½ years. Notices were issued and the respondent/wife appeared	

[पीछे देखिये

(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

through her counsel Shri Anil Bara, who filed his Vakalatnama on 07.03.2003 and thereafter did not appear. The Court proceeded ex parte.

4. Learned counsel for the appellant submit that the petition for divorce was filed before the trial Court on 02.01.2003 under Section 10(1)(ix) of the Divorce Act, which has been added by Act No.51 of 2001 and came into force with effect from 03.10.2001. They further submit that the marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may be dissolved on the ground that since the solemnization of the marriage, the respondent had deserted the petitioner for atleast two years immediately preceding the presentation of the petition. It is submitted that the court below failed to consider the provisions of Section 10(1)(ix) of the Divorce Act.

5. Section 10(1)(ix) of the Divorce Act is pertinent and is quoted below:

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

"10. Grounds for dissolution of marriage.-(1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent-

(i) xxx
(ii) xxx
(iii) xxx
(iv) xxx
(v) xxx
(vi) xxx
(vii) xxx
(viii) xxx
(ix) *has deserted the petitioner for at least two years immediately preceding the presentation of the petition."*

6. On perusal of the impugned judgment, it is apparently clear that the amendment made in the law has not at all been considered by the Court below. Though this ground was available to the petitioner/appellant, but the Court below in para 10 of the impugned judgment has held that this ground was not available and for this reason alone dismissed the petition. The judgment therefore is not sustainable.

[पीछे देखिये

(16)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

7. In view of the above position, the Court below was not justified in dismissing the petition. No finding as such has been recorded whether there is desertion or not. Accordingly, judgment passed by the trial Court is set aside and the matter is remitted back to the trial Court for deciding it afresh after framing the necessary issues.

8. At this stage, learned counsel for the respondent submit that though the respondent remained ex parte before the Court below, therefore, she may be given opportunity to file written statement as the matter is being remanded. They state that fixed date may be given.

9. Having thus considered, in the opinion of this Court, it is directed that the parties to appear before the trial Court personally or through their counsel on 05.05.2004. On the prayer made and in the ends of justice, opportunity is given to the respondent to file written statement, if so desire, on that date itself or within seven days thereafter. The trial Court shall decide the matter as early as possible preferably within three

[पीछे देखिये

(17)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

months from the date of appearance. It is made clear that if any party does not appear on the date fixed or written statement as directed is not filed, the Court below shall proceed in accordance with law.

9. With the aforesaid observations, the appeal stands allowed.

Costs as incurred by the parties.

Record of the court below be sent forthwith.

Certified copy as per rules.

Sd/-
Fakhruddin
Judge

[पीछे देखिये